

IT 95-93  
Tax Type: INCOME TAX  
Issue: Federal Change (Individual)

STATE OF ILLINOIS  
DEPARTMENT OF REVENUE  
OFFICE OF ADMINISTRATIVE HEARINGS  
CHICAGO, ILLINOIS

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DEPARTMENT OF REVENUE )  
STATE OF ILLINOIS )  
 )  
v. ) Docket:  
 )  
TAXPAYER ) Hollis D. Worm  
 ) Administrative Law Judge  
Taxpayer(s) )  
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RECOMMENDATION FOR DISPOSITION UPON REHEARING

SYNOPSIS: This matter is before this administrative tribunal as the result of a timely Request for Rehearing by Taxpayer (hereinafter referred to as the "taxpayer") to a Notice of Disposition issued to him on August 7, 1995. The basis of the Notice of Disposition was the result of the taxpayer's failure to appear at the formal Hearing scheduled in this matter on August 4, 1995 and thus he was declared to be in default and the Notice of Deficiency (herein after referred to as the "Notice") was affirmed in its entirety.

The basis of the Notice is the determination of the Illinois Department of Revenue (hereinafter, the "Department") that the taxpayer had failed to advise the Department of a final federal change for the tax year ending December 31, 1990. The Notice proposed an increased tax liability, as well as a penalty pursuant to 35 ILCS 5/1005 for failure to pay the entire tax liability by the due date.

In his Protest, the taxpayer contends that all adjustments made on his Illinois income tax return were correct and truthful.

The Rehearing was held on September 26, 1995. The issues to be decided are whether the taxpayer is liable for Illinois income tax as a

result of a final federal change which increased his federal adjusted gross income and, if so, whether he is additionally liable for a penalty pursuant to 35 ILCS 5/105 for the subject tax year?

Following the submission of all evidence and a review of the record, it is recommended that the Notice of Deficiency be upheld.

FINDINGS OF FACT:

1. The Department's prima facie case, inclusive of all jurisdictional elements, is established by the Notice of Deficiency, which indicates that final changes were made to the taxpayer's federal adjusted gross income which correspondingly increased his Illinois base income and resulted in increased Illinois income tax liability for the tax year ending December 31, 1990. Dept. Ex. No. 1

2. The taxpayer filed a timely Protest to the Notice. Dept. Ex. No.2

3. The taxpayer did not report the final federal change to the Department pursuant to 35 ILCS 5/506 (a) and (b).

4. The taxpayer failed to demonstrate that his failure to report the final federal change to the Department was due, in whole or in part, to reasonable cause.

CONCLUSIONS OF LAW: Any person required to file an Illinois income tax return is required to notify the Department, within the time frame set by statute, of any final federal change which affects the computation of such person's base income. 35 ILCS 5/506(a)(b). Here, there was such a final federal change which the taxpayer failed to report to the Department. Accordingly, the taxpayer is subject to additional tax for the subject tax years.

In addition to asserting a tax deficiency, the Notice proposes a penalty pursuant to 35 ILCS 5/1005 for failure to pay the entire tax liability by the due date. Penalties imposed under the provision of this statutory section, however, shall not apply if failure to pay the tax at

the required time was due to reasonable cause. 35 ILCS 735/3-8.

The existence of reasonable cause justifying abatement of a penalty is a factual determination that can only be decided on a case by case basis (Rorabaugh v. United States, 611 F.2d 211 (7th Cir.,1979)) and has generally been interpreted to mean the exercise of ordinary business care and prudence (Dumont Ventilation Company v. Department of Revenue, 99 Ill.App.3d 263 (3rd Dist. 1981)). The burden of proof is upon a taxpayer to show by a preponderance of evidence that it acted in good faith and exercised ordinary business care and prudence in providing for the timely payment of its tax liability.

The taxpayer presented no evidence to support a finding that he made a good faith effort to determine his proper income tax liability. Consequently, the taxpayer has not met his burden of proof to show by a preponderance of evidence that he acted in good faith and exercised ordinary business care and prudence to pay his entire tax liability to the State of Illinois by the due date.

It is my recommendation that this matter be decided in favor of the Department of Revenue and the Notice of Deficiency be upheld in its entirety.

Hollis D. Worm  
Administrative Law Judge

October 12, 1995